

LARKIN SUBDIVISION (89-16) TOLEMAN ROAD

Mr. William Hildreth came before the Board representing this proposal.

Mr. Soukup: We are looking at the tax map, tax map shows that no matter which private street you look at, this is the fifth lot, not the fourth lot like the table says. Why is that.

Mr. Hildreth: Because the lot 33.8 is transferred to someone by the name of Miller and when it was, I have here a copy of the deed of transfer that I will give Mr. Ronen. It had that language that I have circled in it restricting preventing access off Piper Drive to that particular lot. That lot is--

Mr. Soukup: Is it still a separate lot.

Mr. Hildreth: It is still a separate tax lot.

Mr. Soukup: So that at some future time it can be resolved without that provision.

Mr. Hildreth: It was designated as not a building lot whether the original subdivision was done.

Mr. VanLeeuwen: The issue is do we have four or five lots.

Mr. Hildreth: You have, if you want to count lots, you can count lots but you have four only that have access to this road. Now, the lot that I am talking about that was transferred is this one here and this note here says not a building lot. This was transferred to Miller.

Mr. Soukup: Was it made part of his deed so it is now a single lot or is it still a separate tax lot.

Mr. Hildreth: It is still a separate tax lot.

Mr. Soukup: If it has a separate tax lot number, there is no reason it can be built upon.

Mr. Hildreth: At the time you have got two large lots here that have the potential to be subdivided they never have been. The owners that are there now have never--

Mr. VanLeeuwen: On Piper Drive, how many lots do we have on Piper Drive, now existing.

Mr. Hildreth: I count one, two, three, four and this not a building lot that is owned now by Miller.

Mr. VanLeeuwen: Where does Miller live?

Mr. Hildreth: Miller lives in this house here and Miller also owns this lot.

Mr. VanLeeuwen: This was an existing house where Miller lived, he just bought the piece behind.

Mr. Hildreth: He lives right here. He has frontage on Toleman Road.

Mr. VanLeeuwen: The only thing I can see to do is get the lot line removed and make that one piece of property and then he wouldn't have the problem if that can be done.

Mr. Hildreth: I don't see the difference.

Mr. Soukup: You have to get Miller to file a new deed combining everything into one parcel.

Mr. Hildreth: Does the Board, do--when this subdivision was done, this was deemed not a building lot. What does that mean, that means that you can't build.

Mr. VanLeeuwen: He can come in and get a building permit for that lot.

Mr. McCarville: It is not a building lot.

Mr. Hildreth: I will tell you that this was never tested for perc. So--

Mr. Babcock: As far as the combining of the two lots, what I have been finding is that what they are doing is people would combine those lots, have a new deed and combine them for what they call tax purposes and some day down the road later on they make up, they separate it again.

Mr. Edsall: That is what is happening, that is not that they are filing a new deed, they tell the tax department to combine the lots as a single tax number but retain it as two different parcels or two different deeds so what Vince is saying, I believe, is true if they combined to a single deed and it was clearly stated that that lot does not have any legal access through the private road, then it is protected. Doesn't it say at this time so maybe at this time it is a building lot so that is the problem, it doesn't really define when it becomes a building lot, when it ceases to be not a building lot.

Mr. VanLeeuwen: If we allow four more lots and the way it is now we are creating another lot to be built on.

Mr. Hildreth: I understand that you can't have a fifth lot.

Mr. VanLeeuwen: Regardless of what the note says on the map that is not a building lot but Miller can come in right off of Toleman Road and put a road in and create a couple lots in the back.

Mr. Hildreth: This right here right now is a separate tax map. That is Miller.

Mr. VanLeeuwen: He can run right along the property line.

Mr. Hildreth: For what purpose.

Mr. VanLeeuwen: And create a couple lots in the back.

Mr. Soukup: Or put a dog leg.

Mr. McCarville: I don't understand what we want to do.

Mr. Schiefer: Combine the two lots legally so he can build an extra lot.

Mr. McCarville: Which two, the green and the orange, why are they highlighted. Is that what we are working with.

Mr. Hildreth: No. This was the lot line change. I got this up for the lot line change that created this site and then we are cutting this lot 4.2 off of this in other words what you are looking at right there now is a split right here creating two lots.

Mr. McCarville: So, we are working with another subdivision.

Mr. Babcock: I think the wording in our ordinance says that you can't have more than four lots on a private road, it doesn't say four buildable lots, it says four lots and if that is a lot whether it is buildable or not, it is still a lot.

Mr. Hildreth: If that is the way it is defined.

Mr. VanLeeuwen: When whoever came in with this we discussed this that night at length because we knew what we were doing when we gave him a lot line change at that time. We knew that he was going to come in for another lot. We told him it is going to be a problem.

Mr. Hildreth: I understand and I have no problem with four lots on a private road. I thought that because this had been deeded over and was not a building lot, it would not be part of the lot count.

Mr. Schiefer: It says four lots and to my memory, that is the way it is so you better get him to combine those into a single lot and then you can go ahead with the other subdivision.

Mr. VanLeeuwen: Then, you are legal. What Mr. Ronas has said that this does not have access over Piper Drive so even though you are counting five lots there are only four that have legal access. I know it is--

Mr. Pagano: I don't buy it. It don't fly by me, not with all that bordering along that road. That road there is supposed to be paved and maintained by all the property owners and here you have a tremendous stretch and nobody is going to be paying for that.

Mr. Hildreth: There is a maintenance agreement in effect for all these lots.

Mr. Soukup: If I own a lot that says I can't use the road I am still going to have to pay for it.

Mr. Hildreth: Miller is not part of the maintenance agreement.

Mr. Soukup: What about the lot that Miller bought in the back that has frontage on the road now that lot was part of the maintenance agreement at one time now that Miller owns it, you are telling me he is not going to pay for it any maintenance on the road or he is.

Mr. Hildreth: I would suspect not but I don't know for a fact if he is part of that.

Mr. Edsall: Just two items, I had discussed it with Bill about getting a copy of the maintenance agreement just to determine who was using the road and that quote not a building lot is a referenced lot to be part of the maintenance agreement so I construed that to mean that they have legal right to use it if they are part of an agreement. I agree with Vince that unless you formally make that one lot by filing a new deed if someone, it could happen, sold that piece even that they are common ownership, if they sold it, you are going to sure as heck somebody run to the Zoning Board of Appeals and say I have a hardship and I have no other way of getting to it unless you combine it, you are not really solving the problem.

Mr. Schiefer: Is there any reason why he wouldn't want to combine it.

Mr. Hildreth: I don't know, all we could do is ask.

Mr. Soukup: It seems to be to much without that lot there.

Mr. Hildreth: In terms of combining this, making one lot, it becomes a potential for another subdivision but as long as that subdivision--

Mr. Soukup: He'd be turned down for the same reason you are unless he subdivides off the front of Toleman.

Mr. Hildreth: What about when you transfer this and then deed restrict the access, does that negate the fact that that is in the maintenance agreement.

Mr. Rones: The maintenance agreement is a different problem.

Mr. Edsall: Isn't there a form that was used recently about giving up rights such as right-of-way easement agreements that would be filed just to formally release the use or the ability to use that road.

Mr. Rones: You mean in some other subdivision we have had here.

Mr. Edsall: Something just recently occurred, it might, I might be thinking about Mr. Loeb in Cornwall, they filed a statement of release that they'd no longer have the right to use that road.

Mr. Rones: I think that must have been in Cornwall because it doesn't ring a bell here.

Mr. Edsall: That would be probably be the best means of giving up the rights to use that road.

Mr. Rones: From what Mike said before the issue isn't who can use the road, it is a question of lots being on the road so I don't think that is going to solve our ordinance problem as to whether you have, they have the right to use the road or not. I don't think that is really relevant.

Mr. Soukup: Come back with some more solid information.

Mr. Hildreth: By that, you mean we have to see if we can get Miller to agree to combine.

Mr. Rones: Yes because that will resolve the problem for now, what he does for some future subdivision, that is something that will have to be dealt with at that time.

Mr. Hildreth: More than just a contract, you want to see a filed instrument.

Mr. Rones: Deed and with the instruction to the County Clerk to combine these into one lot so as far as the deed records and the tax records are concerned, that the lot is now one lot.

Mr. Hildreth: I didn't get a chance to introduce Mr. Larkin who is the owner and the applicant. Do you understand everything that has been going on here.

Mr. McDonald: My name is Bruce McDonald, the issue is a lot count by way of the ordinance and that seems to be the issue as far as the use of that lot or that lot being able to use the road. I am sure that restrictive covenant will run with the land and there will never be a time when that land will be able to use the road. But, I guess it is a question of counting lots under the ordinance and whether or not the tax lot/building lot distinction.

Mr. Schiefer: That is the way we are going to have to go.

Mr. Hildreth: Aside from that, were there any other questions or comments.

Mr. Schiefer: Not at this time.